

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FREDERICK L. MORGAN

Claimant

VS.

CONAGRA FOODS, INC.

Self-Insured Respondent

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Docket Nos. 1,012,535
& 1,018,197

ORDER

Respondent appealed the August 8, 2005, Award entered by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on December 13, 2005.

APPEARANCES

Pamela J. Billings of Kansas City, Missouri, appeared for claimant. Mark E. Kolich of Lenexa, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. In addition, at the May 26, 2005, regular hearing, the parties agreed to combine the two docketed claims and treat the resulting claim as one for an alleged injury that occurred in a series of traumas through July 14, 2003.

ISSUES

Claimant alleges he injured his low back while working for respondent. In the August 8, 2005, Award, Judge Hursh found claimant injured his low back working for respondent on July 14, 2003, and that the low back injury arose out of and in the course of claimant's employment with respondent. Accordingly, the Judge awarded claimant seven weeks of temporary total disability benefits, permanent disability benefits for a five percent whole person functional impairment, and payment of medical expenses.

Respondent contends Judge Hursh erred. Respondent argues that claimant failed to prove he sustained a work-related accident and that claimant failed to prove he sustained any permanent impairment. In addition, respondent contends the emergency room services and MRI claimant received should be treated as unauthorized medical

treatment, which is subject to a \$500 statutory limit. Consequently, respondent requests the Board to either reverse or modify the Award.

Conversely, claimant contends the Award should be affirmed.

The issues before the Board on this appeal are:

1. Did claimant injure his low back in an accident that arose out of and in the course of his employment with respondent?
2. If so, what is the nature and extent of claimant's injury and disability?
3. Should the emergency room services and the MRI claimant received be treated as authorized or unauthorized medical treatment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the August 8, 2005, Award should be affirmed.

The Board affirms the Judge's conclusion that claimant sustained a five percent whole person functional impairment due to the low back injury claimant sustained while working for respondent. The Board also affirms the Judge's finding that claimant's low back injury resulted from an accident that arose out of and in the course of his employment with respondent.

Claimant's testimony is credible. The record establishes that claimant began working for respondent in late March 2003 as a stuffer, which required him to lift heavy pieces of meat while twisting and turning at the waist. On July 7, 2003, claimant experienced low back pain while loading a lower shelf with meat. Claimant reported the pain to his supervisor and the company nurse. Claimant continued to work and on July 14, 2003, he experienced another bout of low back pain while working with heavy pans of cooked meat. Claimant had difficulty straightening his back and, therefore, he asked a co-worker to summon his supervisor. Claimant's supervisor arrived and took claimant to see the company nurse.

Claimant told both his supervisor and the company nurse that his back was hurting and that he needed to see a doctor. Despite the fact claimant's supervisor and the company nurse were aware claimant's severe back pain began while claimant was lifting and working with heavy pans of meat, respondent did not refer him for medical treatment. Accordingly, claimant left the plant and later visited an emergency room where he received medical treatment and was scheduled for an MRI and to follow up with a doctor.

The Board finds and concludes that respondent had knowledge that claimant injured his back at work and, therefore, respondent had a duty to provide him with medical treatment. Because respondent neglected to provide claimant with appropriate medical treatment, claimant was entitled to seek medical treatment at respondent's expense.

If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director.¹

Consequently, the Board affirms the Judge's conclusion that respondent is responsible for the medical treatment that claimant received in the emergency room and for the related MRI as authorized medical benefits.

The Board also affirms the Judge's finding that claimant sustained a five percent whole person functional impairment due to his work-related low back injury. The Board rejects Dr. Douglas M. Rope's opinion that claimant sustained a 10 percent whole person functional impairment as measured by the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.) as the doctor believed claimant experienced some mild radiculopathy down his right leg from the L5-S1 intervertebral disc. On the other hand, the Board rejects Dr. Jeffrey T. MacMillan's opinion that claimant sustained no functional impairment due to his work activities as claimant had a five percent whole person functional impairment under the AMA Guides (4th ed.) before the July 14, 2003, incident at work and that such functional impairment has not changed as claimant's work-related injuries have resolved.

The Board is persuaded that claimant has a five percent whole person functional impairment as measured by the *Guides* (4th ed.). But the Board finds Dr. MacMillan's opinion unpersuasive that claimant has recovered from his July 2003 injuries. Dr. MacMillan, who was hired by respondent or its insurance administrator, initially related claimant's five percent whole person functional impairment to the accident at work and opined that claimant had no preexisting functional impairment.² Moreover, when the doctor saw claimant in July 2004, August 2004, and April 2005, the doctor noted claimant had ongoing back pain on each occasion. Moreover, claimant's testimony regarding his ongoing back symptoms is credible.

In summary, the Board affirms the Judge's finding that claimant has sustained a five percent whole person functional impairment under the AMA Guides (4th ed.), which entitled

¹ K.S.A. 44-510j(h).

² MacMillan Depo., Resp. Ex. B.

claimant to receive permanent disability benefits under K.S.A. 44-510e for a five percent permanent partial general disability.

The parties are reminded that Social Security numbers are no longer needed on pleadings and briefs. Accordingly, the parties are requested to discontinue that practice.

The Board adopts the findings and conclusions set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Board affirms the August 8, 2005, Award.

IT IS SO ORDERED.

Dated this ____ day of December, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Pamela J. Billings, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director